

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

DONALD WAYNE HULL
TDCJ-CID #673637

V.

R. FORD, ET AL.

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C.A. NO. C-05-043

ORDER

This is a civil rights action filed by a state prisoner pursuant to 42 U.S.C. § 1983. Pending is plaintiff's motion to amend. (D.E. 117). Specifically, plaintiff seeks to add the Texas Department of Criminal Justice as a defendant.

On January 25, 2005, plaintiff filed his original complaint. (D.E. 1). On March 16, 2005, plaintiff filed a first amended complaint. (D.E. 12). On March 18, 2005, plaintiff filed the second part of his "first amended complaint." (D.E. 13). On May 7, 2005, an order for service of process was issued. (D.E. 22). On March 25, 2005, plaintiff filed a motion to amend his amended complaint. (D.E. 27). On June 10, 2005, defendants filed an answer to the amended complaint. (D.E. 44). On June 27, 2005, plaintiff filed an amended complaint without seeking leave. (D.E. 50). On August 5, 2005, the amended complaint was struck from the record. (D.E. 58).

Furthermore, on August 9, 2005, an order severing and transferring certain claims was entered. (D.E. 60). On August 29, 2005, the undersigned magistrate judge issued a memorandum and recommendation that recommended the dismissal of certain claims and the retention of certain claims. (D.E. 72). The district court judge adopted this recommendation, (D.E. 88), and entered final judgment. (D.E. 89).

Based on the order adopting the recommendation, a second order for service of process was issued for Jane Doe 1 and Nurse Gonzales. (D.E. 91). On December 21, 2005, Candis Gonzales

filed an answer. (D.E. 100). When plaintiff failed to notify the Court of Jane Doe 1's identity, the Attorney General filed a motion to dismiss plaintiff's claim against that defendant. (D.E. 106). Plaintiff then filed a motion to add Melinda Huerta. (D.E. 109). The undersigned magistrate judge issued a memorandum and recommendation that the motion to dismiss be denied and that Ms. Huerta be added.

On October 3, 2005, defendants filed a motion for summary judgment. (D.E. 83). Plaintiff has received extensions of time to file a response. Plaintiff's response was due January 27, 2006. (D.E. 107). To date, plaintiff has not filed a response.

At least ten months have passed since the filing that plaintiff references and a year since the filing of the lawsuit. There has been a flurry of activity. Moreover, there is an outstanding motion for summary judgment to which plaintiff needs to respond. It is too late to seek to add a new defendant.

Moreover, plaintiff argues that the Texas Department of Criminal Justice should be added as a defendant because of some "mistake." He does not explain this mistake. Clearly, plaintiff was aware of the Texas Department of Criminal Justice when he filed his lawsuit. Therefore, it does not appear to be a mistake as contemplated by Rule 15(c)(3) of the Federal Rules of Civil Procedure. See Jacobsen v. Osborne, 133 F.3d 315, 320-21 (5th Cir. 1998).

Accordingly, plaintiff's motion to amend, (D.E. 117), is hereby DENIED.

ORDERED this 30th day of January 2006.



BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE